FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 22-001(a)(1)

Specific Purpose:

This section is being amended to connect the definition of the term "adequate notice" with the standards for adequate notice established in Section 22-071.

Factual Basis:

This amendment is necessary to respond to concerns expressed by claimants' advocates that the standards for "adequate notice" are not set forth in the definition of that term. By referring to the section setting forth standards, the amendment also helps to notify all parties of the standards for adequate notice and supports the protections afforded to claimants by the adequate notice standards.

Section 22-001(a)(3)

Specific Purpose:

This section is being amended to define the term "aid" by clarifying that, under the authorizing statute, the agency has no authority to hear appeals relating to public programs exclusively financed by county funds.

Factual Basis:

This amendment is necessary to make the regulation consistent with Welfare & Institutions (W&I) Code section 10950, which authorizes the California Department of Social Services (CDSS) to provide state hearings for "applicants or recipients of public social services" except for "aid exclusively financed by county funds." Claimants have filed appeals related to county programs, such as General Assistance. These appeals must be dismissed and the claimant referred to the county appeal program. This results in delaying the claimant's right to appeal and expending state resources to explain the limits of the agency's jurisdiction. The proposed addition makes the regulation more clearly consistent with W&I Code section 10950 by limiting the agency's jurisdiction to those programs financed by state or federal funds.

Section 22-001(a)(3)(A)

Specific Purpose:

This section is being amended to define the term "aid" by correcting the name of the Kinship Guardian Assistance Payment (Kin-GAP) program and by adding the following new programs to the list of programs subject to state hearing: the Approved Relative Caregiver Funding Option Program (ARC), Aid to Families with Dependent Children - Extended Foster Care (EFC), and assessments under *Harris v. CDSS* and the Resource Families Approval Program.

Factual Basis:

This amendment is necessary because Section 22-001(a)(3) defines the term "aid" by listing all public social services programs subject to a state hearing. The list also clarifies the term "public social services" as used in W&I Code section 10950.

On January 1, 2012, young persons between 18 and 21 years of age became eligible for EFC benefits under the California Fostering Connections to Success Act [Assembly Bill (AB) 12, Chapter 559, Statutes of 2010], which amended W&I Code section 11400 [and multiple other sections of the Family Code (FC) and W&I Code] to add "nonminor dependents." The EFC is a "public social service" within the meaning of W&I Code section 10950, and decisions are subject to state hearing under that section. Therefore, the program must be added to the list of such programs in Subsection 22-001(a)(3).

On June 13, 2012, the court in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, ruled that home approvals for relatives or non-relative extended family members are a "public social service" within the meaning of W&I Code section 10950. The court, therefore, ordered that relatives or non-relative extended family members who have received an adverse home approval decision on an application to provide foster care are entitled to a state hearing. Since actions under that program are subject to a state hearing, it must be added to the list of such programs in Section 22-001(a)(3).

W&I Code section 11461.3, added by Senate Bill (SB) 855 (Chapter 29, Statutes of 2014), created the ARC, which allows counties to pay an approved relative caring for a non-federally eligible dependent child the same as the basic foster care rate that an approved relative caring for a federally eligible dependent child would receive. The ARC is a "public social service" within the meaning of W&I Code section 10950. Since actions under that program are subject to a state hearing, it must be added to the list of such programs in Section 22-001(a)(3).

W&I Code sections 16519.5 through 16519.6, as amended by AB 403 (Chapter 773, Statutes of 2015), provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process described in W&I Code sections 16519.5 through 16519.6 shall be governed by W&I Code section 10950. Therefore, the Resource Family Approvals process must be added to Section 22-001(a)(3)'s list of programs subject to a state hearing.

Section 22-001(a)(6)

Specific Purpose:

This section is being amended to define the term "authorized representative" consistently with the standard that a person's authorization for a representative in a state hearing terminates at the person's death.

Factual Basis:

This amendment is necessary to make the regulation consistent with Section 22-001(c)(2), which defines "claimant" to include an applicant or recipient of aid, or the representative of the estate of a deceased applicant or recipient. Section 22-004.4 provides that when a claimant dies, the state hearing proceeding may be continued only by or on behalf of the representative of the estate. The proposed addition prevents confusion by making the definition of "authorized representative" consistent with Section 22-004.4.

Section 22-001(c)(2)(F)

Specific Purpose:

This section is amended to substitute the word "immigrant" for the word "alien."

Factual Basis:

This change has no regulatory effect, because the word is used only in the context of sponsorship for immigration.

Section 22-001(c)(2)(H)

Specific Purpose:

This section is being amended to define the definition of the term "claimant" to include relatives or non-relative extended family members who have received an adverse decision on an application for approval to provide foster care.

The amended definition also cross-refers to the jurisdictional limits in Sections 22-001(c)(2)(B)(1) and 22-003.15. The State Hearings Division has no jurisdiction to decide administrative disputes regarding the placement or removal of a foster child.

Factual Basis:

This amendment is necessary because Section 22-001(c)(2) defines the term "claimant" by listing all persons who are legally entitled to a state hearing. State law has expanded the class of persons entitled to a state hearing.

On June 13, 2012, the court in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, ordered that relatives or non-relative extended family members who have received an adverse decision on an application for approval to provide foster care are "applicants for or recipients of public social services" entitled to a state hearing under W&I Code section 10950. Therefore, they must be added to the list of persons legally entitled to state hearings.

W&I Code sections 16519.5 through 16519.6 [added by AB 403, Chapter 773, Statutes of 2015)], provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process shall be governed by W&I Code section 10950. Therefore, persons subject to a denial, rescission or exclusion under the Resource Family Approvals process must be added to the list of persons legally entitled to state hearings.

Both *Harris* and Resource Family Approval decisions concern home approvals for possible placement of children. Only the home approval decision is subject to a state hearing; foster child placement or removal is not. The cross-reference is necessary to avoid confusion.

Final Modifications:

Following the public hearing, CDSS struck the sentence, "However, there is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court." This subsection addresses the definition of "Claimant," and not jurisdiction.

Final Modifications:

Following the public hearing, the term "individual" to describe a "Harris" claimant was changed to "relative or non-relative extended family member" in order to track language of the court order and provide additional specificity.

Section 22-001(c)(5)

Specific Purpose:

This section is being amended to define the term "county" consistently with W&I Code section 10952.5 by deleting a reference to a section of the Manual of Policies and Procedures (MPP) that no longer exists.

Factual Basis:

This amendment is necessary to make the definition of "county" consistent with W&I Code section 10952.5, which establishes requirements for counties that do not apply to the Department of Health Care Services (DHCS).

The amendment is necessary because the term "county" is defined to include the DHCS except in those sections of the MPP, including MPP section 22-053.113(f), that implement W&I Code section 10952.5. MPP section 22-053.113(f), which relates to postponements,

was renumbered in 2007. Before 2007, it was numbered 22-053.165. The 2007 revision inadvertently omitted to change the old reference in 22-001(c)(5). The proposed amendment corrects that omission.

Final Modifications:

Following the public hearing, CDSS corrected the citation format for 22-001(c)(7).

Sections 22-001(f)(1)(A)(2) and (3)

Specific Purpose:

These subsections are being added to define the term "filing date" for hearing requests sent by facsimile or electronically. Other subsections are being renumbered as required by the addition.

Factual Basis:

The additions are necessary because in addition to written and telephoned requests, the State Hearings Division receives requests for hearing by facsimile, email and other electronic means including on-line hearing request forms. The proposed additions define the filing date for these requests as the date submitted. The filing date determines important hearing rights.

Sections 22-001(f)(1)(A)(4-6) renumbered from 22-001(f)(1)(A)(2-4)

Specific Purpose/Factual Basis:

These sections are being renumbered due to the adoption of new Subsections (2) and (3).

Final Modifications:

Following the public hearing, CDSS corrected the format of the numbering in Subsections 4-6, placing the "." after the number instead of before.

Section 22-001(f)(1)(A)(5) (as renumbered):

Specific Purpose:

This section is being amended to add protection for claimants' due process rights by defining the presumed filing date of a request for hearing at five days, rather than three days, before it is stamped "received" by the State Hearings Division.

Factual Basis:

This amendment is necessary to respond to concerns expressed by claimants' advocates that claimants' due process rights were being limited by the presumption that a hearing request was filed three days before the request was stamped "received" by the State Hearings

Division. Section 22-001(f)(1)(A)(5) assigns a filing date to requests for hearing that do not show a postmark, facsimile sending date, electronic sending date or hand-delivered receipt date. The proposed amendment extends the presumed time of sending the request to five days prior to receipt by the State Hearings Division. The extended period is consistent with the time for mailing required in Code of Civil Procedure section 1013(a), which governs service of process in civil actions. The extended period is also more consistent with the time actually required for a request for hearing to be placed in a mailbox, picked up by the postal service, delivered to the CDSS central mail room, and forwarded to the State Hearings Division.

Section 22-001(l)(1)(a) and (b)

Specific Purpose:

This section is being amended to require that both CDSS and the California Department of Health Care Services (DHCS) are subject to the language-compliant notice requirements set forth in Government Code section 7290 *et seq.* and MPP section 21-115.2.

Factual Basis:

The amendment is necessary to make the regulation consistent with California Code of Regulations (CCR), Title 22, section 50953, which subjects all Medi-Cal hearings, including those in which DHCS appears, to CDSS' regulations involving hearing procedures. MPP section 21-115.2 requires forms and other written materials required for provision of aid or services to be available and offered to applicants and recipients in their primary languages. Government Code section 7290 *et seq*. also requires state agencies, including CDSS and DHCS, to provide appropriate bilingual services to individuals who have identified languages other than English as their primary languages.

The proposed amendment replaces the term "CDSS" with the term "the Department," which is defined to include both CDSS and DHCS in section 22-001(d)(3). This amendment is necessary to ensure that Limited-English-Proficient claimants and their advocates are aware of their statutory rights.

The DHCS already conforms to the standard codified by this amendment. See All County Welfare Directors Letter No. 13-13 (May 23, 2013).

Section 22-003.1

Specific Purpose:

This subsection is being amended to make the regulation consistent with W&I Code section 10950 and MPP section 22-001(a)(6).

Factual Basis:

The amendments are necessary because W&I Code section 10950 provides statutory authority to provide hearings related to "public social services," which is defined to exclude "aid

exclusively financed by county funds." County-funded and administered programs are not subject to state hearings. The added language refers to "county-administered state aid programs" to clarify that there is no right to a state hearing regarding a county-funded and administered program, such as General Assistance or General Relief.

The amendment is also necessary because Section 22-001(a)(6) defines "county action" to include county action or inaction related to a claimant's application for or receipt of aid. The proposed amendment reiterates the phrase "or inaction" to avoid confusion.

Section 22-003.141

Specific Purpose:

This subsection is being added to make the regulation consistent with W&I Code sections 16519.5 through 16519.6, which created the Resource Family Approval process and provide a right to a state hearing to dispute a home approval decision.

Factual Basis:

The proposed addition is necessary to distinguish decisions under *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-80000438, or under the Resource Family Approval process, from child placement decisions. There is a right to a state hearing to dispute an action or inaction under *Harris v. CDSS* or the Resource Family Approval process, but there is no right to a state hearing to dispute a child placement decision.

The court in *Harris v. CDSS* ruled that home approvals for relatives or non-relative extended family members seeking to provide foster care are "public social services" within the meaning of W&I Code section 10950. W&I Code sections 16519.5 through 16519.6 (AB 403, Chapter 773, Statutes of 2015) provide that hearings on denials, rescissions and exclusions under the Resource Family Approvals process shall be governed by W&I Code section 10950. County actions under both *Harris* and Resource Family Approvals are subject to state hearings. However, these home approvals are not custody decisions. The proposed amendment distinguishes between home approvals, for which there is a right to a state hearing and child custody decisions, for which there is no right to a hearing because the State Hearings Division lacks jurisdiction.

Sections 22-004.1, .2, .22, .3 and Section 22-073.252

Specific Purpose:

These sections are being amended to establish the right to request a hearing electronically or by telephone.

Factual Basis:

These amendments are necessary to make the state hearing process more efficient and convenient for claimants and respondents. All agencies currently use electronic

communications, including email and on-line forms, in processing state hearings. Legislation implementing the Affordable Care Act of 2010 requires the agencies that make Medi-Cal eligibility determinations, including CDSS, to accept electronic communications. (See, e.g., W&I Code section 14005.37, AB 1, Chapter 3, Statutes of 2013, Ex. Sess.)

The proposed amendments add the word "electronic" to acknowledge that requests for hearing are received by electronic means as well as on paper and to establish that electronic hearing requests can trigger aid pending the hearing when filed within the time limits for aid pending.

The proposed amendments will improve efficiency of the hearing process by allowing the use of securely transmitted electronic copies of hearing requests, rather than paper originals. The proposed amendment reflects the current practice of accepting hearing requests and maintaining hearing files electronically.

Since electronic messages, telephone calls and oral requests can be received in any CDSS office, the proposed amendments eliminate the term "in Sacramento." Although CDSS' customer service unit happens to be located in Sacramento, there is no further need for a regulation requiring that location.

The proposed amendment is necessary because rehearing requests are received and stored electronically. There may be no "original" request, and even when there is a paper original, electronic storage is more efficient and secure. To accommodate electronic filing, this amendment allows the use of either the original or a copy of the hearing request.

Final Modifications:

CDSS changed "the California Department of Social Services" to "CDSS" for consistency when referring to the Department within 22-004.

Section 22-004.21

Specific Purpose:

This subsection is being amended to protect the claimant's right to request a hearing in writing without using the specific paper form used by the county to notify the claimant of the disputed action.

Factual Basis:

This amendment is necessary because claimants who wish to request a hearing may not have the specific Notice of Action form used to notify them of the disputed action. The back of every Notice of Action (Form NA9) includes a form to request a state hearing. The form has a blank space for the claimant to describe any disputed issue; it need not be the specific issue raised on the front of the notice. The amendment substitutes the indefinite for the definite article to clarify that a claimant may use any NA9 form, not "the" specific form attached to the notice the claimant is disputing.

Section 22-004.4

Specific Purpose:

This subsection is being amended to correct an ambiguity in the previous version of the regulation governing claims filed by a claimant who dies before the hearing.

Factual Basis:

The proposed amendment is necessary to clarify that this section is consistent with Subsections 22-001(c)(2)(A) and (C) which define a "claimant" to include an applicant, a recipient, or a representative of the estate of a deceased applicant or recipient. A deceased applicant or beneficiary is not a claimant. Therefore, the word "claimant" is confusing if it is used to refer to the deceased applicant or beneficiary, who must be succeeded by the representative of the decedent's estate. The word "decedent" is being substituted for the word "claimant" to make the regulation clear and consistent.

Section 22-009.13 and .14

Specific Purpose:

These subsections are being added to make the regulation consistent with W&I Code section 10951 by allowing claimants to request a hearing after 90 days, but no more than 180 days, if they have good cause as determined by the director. and by allowing claimants to request a hearing after more than 180 days if the principles of equity jurisdiction apply.

Factual Basis:

The W&I Code section 10951 states that a person must request a hearing within 90 (or 180) days "after the order or action complained of." The statute does not define the quoted language. The California Department of Social Services has previously interpreted the starting point for the time to request a hearing in Section 22-009.11, as after the mailing of the notice was mailed or given to the claimant.

Subsection 22-009.13 continues this interpretation, for consistency.

Final Modifications:

Following the public hearing, the regulation was modified from "mailed" to "mailed or given to the claimant" to reflect that claimant's may receive a notice in person.

Section 22-009.2, .21-.26

Specific Purpose:

These sections are being amended to clarify the relation between the right to a state hearing to review the current amount of aid, and the rules that changes to IHSS benefits require a needs assessment, which is reflected in MPP sections 30-761.12, 30-761.2, and 30-761.219.

Factual Basis:

This amendment is necessary to explain the relation between the right to a state hearing to review the current amount of aid and the regulations requiring that changes to IHSS benefits require a needs assessment, including but not limited to MPP sections 30-761.12, 30-761.2, and 30-761.219.

Section 22-009.2 was added as an exception to the requirement that claimants file their requests for hearing within 90 days after receiving notice of the disputed action unless there is good cause for delay or equitable jurisdiction applies. Section 22-009.2 allows a state hearing to review the amount of aid received by the claimant during the 90 days prior to the request for hearing.

Sections 30-761.12, 30-761.2, and 30-761.219 require a social worker's needs assessment to establish the need for services, and as part of any change to IHSS benefits. Re-assessments must be performed annually (with some exceptions) and whenever the county becomes aware of changes in circumstances that affect the claimant's need for IHSS services.

The amendments explain how to reconcile the requirement for re-assessment prior to a change of IHSS benefits with the right to a state hearing to review the correct amount of aid during the 90-day look-back period.

CDSS added additional examples to clarify Section 22-009.2.

Final Modifications:

Following the public hearing, CDSS amended the proposed Section 22-009.2 to delete the phrase "For all aid other than IHSS, the" and replaced it with the phrase "A recipient," and proposed a new Section 22-009.21 to address the IHSS program requirement that IHSS recipients have a reassessment of need prior to a change in IHSS benefits.

Following the public hearing, CDSS added the language "to a state hearing" in Section 22-009.23to clarify the claimant's right.

With the addition of Section 22-009.21, the Handbook examples required renumbering. Section 22-009.24 (renumbered) was modified to demonstrate a concept set out in Section 22-009.21; an additional example was added in Section 22-009.26 to demonstrate a different concept set out in Section 22-009.21.

Section 22-009 – Authorities

Specific Purpose:

This section is being amended to delete the reference in the authorities to Senate Bill 84.

Factual Basis:

The reference to Senate Bill 84 is no longer needed. The bill has been codified into statute, and that statute is cited in the References citations for Section 22-009.

Section 22-045.22

Specific Purpose:

This subsection is being added to establish rights to expedited state hearings.

Factual Basis:

The addition is necessary because some claimants have urgent needs that must be resolved by an expedited state hearing. The proposed addition provides for expedited hearings to protect the claimant's health and safety, successful welfare-to-work participation or other urgent needs.

Section 22-045.222

Final Modifications:

Following the public hearing, CDSS is correcting the word "section" to make it plural, since it references multiple sections.

Section 22-045.3

Specific Purpose:

This section is being amended to increase the notice time for hearings from 10 to 15 days, and to create an exception from this 15-day requirement for expedited hearings.

Factual Basis:

This amendment is necessary to make the regulation consistent with CCR, Title 10, section 6614, which requires at least fifteen days' notice for hearings under the Affordable Care Act of 2010. The proposed amendment will require the State Hearings Division to provide a hearing notice 15 days before all regularly scheduled hearings, increasing the notice previously given in CalFresh, CalWORKs and Medi-Cal cases. The proposed amendment also provides for less notice when an expedited hearing is required under Section 22-045.2.

Final Modifications:

Following the public hearing, CDSS change "ten" to "15" as the number of days for notice of the scheduled hearing. This change was previously discussed in the statement of reasons submitted for the public hearing, but omitted in the proposed regulations text.

Sections 22-045.4 and .41 through .44

Specific Purpose:

This section is being amended to establish procedures for expediting state hearings.

Factual Basis:

This amendment is necessary to expedite hearings consistently and fairly. The proposed addition governs granting and denying expedited hearing requests, notifying parties of the grant or denial and providing notice of the expedited hearing. The proposed addition sets time limits for the State Hearings Division to set the hearing (proposed Section 22-045.41), for the county to provide the Statement of Position (proposed Section 22-045.43), and for the Administrative Law Judge (ALJ) to issue a decision (proposed Section 22-045.44). The proposed time limits for setting the hearing and providing the statement of position are consistent with W&I Code sections 10952 and 10952.5. The proposed time limit for the ALJ to issue a decision is consistent with State Hearings Division protocols in practice since these procedures for expedited hearings were described in All County Letter No. 13-40, *supra*.

Final Modifications:

Following the public hearing, CDSS amended Section 22-045.4 to make a minor grammatical change to clarify that the word "necessary" applies to information received from any listed source, and not just claimants. The word "set" in Subsection 22-045.41 and "reset" .43 is changed to "scheduled" and "rescheduled," respectively, to be consistent with other Division 22 phrasing, which refers to scheduling hearings. CDSS amended Subsections 22-045.41 and .42 to refer to the various means the agencies currently use to communicate with claimants, including the requirement to have permission, and comply with state and federal privacy laws regarding electronic communications.

Sections 22-050.23, 22-051.5

Specific Purpose:

These subsections are being amended to establish rights to:

- Object on the record to a claim of evidentiary privilege by the other party;

- Examine all evidence admitted to the administrative record for consideration in the hearing decision.

Factual Basis:

These amendments are necessary to respond to concerns expressed by claimants' advocates and county representatives that the regulations did not provide for on-the-record procedures when a party claims an evidentiary privilege to justify the refusal to provide evidence to the other party. When evidence is withheld under a claim of privilege, the ALJ must decide whether the evidence is privileged and whether it should be included in the administrative record.

These amendments are also necessary to protect a claimant's due-process rights to object to the claim of privilege on the record, and to review any evidence considered in a hearing decision. Claimants' advocates have expressed concern that some counties consistently assert a right to use privileged evidence in the proceeding, without allowing the claimant and the claimant's authorized representatives to examine the evidence. That would be inconsistent with due process, which requires that each party has a meaningful opportunity to respond to the other party's evidence.

Final Modifications:

Following the public hearing, CDSS amended Section 22-050.23 to include that any response to the objection must also be made on the record. This change is required to provide due process, and ensure that the full administrative record is developed. By adding another claim to the list, the addition of the word "both" in Section 22-050.23 was necessary to reflect that any response must be on the record.

Section 22-051.43, 22-041.5

Specific Purpose:

This section is being added to protect a party's right to object to a claim of privilege, by requiring a person who declines to provide information responsive to a subpoena duces tecum based on a claim that the information is privileged, to state the factual and legal basis for the claim of privilege.

Factual Basis:

This addition is necessary because persons responding to subpoenas may decline to provide information responsive to a subpoena duces tecum based on a claim of privilege. If the person does not state the factual and legal basis, the requesting party cannot effectively object to the claim. This addition is also necessary to allow the ALJ to decide whether any privilege applies and to determine whether the evidence must be excluded, redacted, or admitted to the administrative record.

Final Modifications:

Following the public hearing, CDSS amended the section to add the provision that at the hearing, the party requesting the subpoena may respond to any objection stated by or on behalf of the witness or responding party. This addition is required to provide due process, and ensure that the full administrative record is developed.

Section 22-051.7

Specific Purpose:

This section is being added to allow an ALJ to make referrals for possible action under Government Code section 11187.

Factual Basis:

This addition is necessary to respond to concerns expressed by claimants' advocates that state hearing regulations include no enforcement mechanism for failure to respond to a subpoena. Government Code section 11187 allows a department head to petition the superior court for an order compelling compliance with an administrative subpoena. The proposed addition permits ALJs to refer compliance failures to the department head for possible action under Government Code section 11187 by CDSS.

Final Modifications:

Following the public hearing, CDSS amended this section to capitalize the word "Department" for consistency.

Section 22-054.211(b)(3)(B)

Specific Purpose:

This section is being amended to establish an exception to the 30-day completion requirement for conditional withdrawal agreements. The amended section allows additional time, when necessary as a result of the claimant's delay, for the county to complete actions required by a conditional withdrawal agreement.

Factual Basis:

The amendment is necessary because the conditions for withdrawing a claim may include county action that is contingent on information to be provided by the claimant. When the claimant delays in providing this information, it may not be possible for the county to take action within 30 days after the conditional withdrawal is signed.

Final Modifications:

Following the public hearing, CDSS changed the phrase "both parties," to "the parties" to reflect that more than one party may have actions to carry out under the agreement.

Section 22-054.211(b)(3)(C), (D), (E)

Specific Purpose:

These sections are being amended and added to specify the procedures for resolving a claim that has been conditionally withdrawn. In Subsection (C), this section is being amended to substitute "When" for "After" for clarity.

Factual Basis:

The amendments are necessary because parties to state hearings were uncertain how state hearings would be resolved after a conditional withdrawal. The amended regulation clarifies and describes the resolution process after a conditional withdrawal. Subsection (C)'s amendment is necessary because the subsection previously referred to "reinstatement" of a hearing request, which was an undefined term that did not inform claimants of their rights to request a new hearing to dispute the redetermination after a county issues the required notice of redetermination and the original hearing request is dismissed. It also this section is being substitutes "When" for "After" for clarity. Subsection (D)'s addition is necessary to establish the claimant's right to reschedule the hearing if the county fails to issue the required notice of redetermination. Subsection (E)'s addition is necessary to establish the claimant's right to report a county's failure to comply with a conditional withdrawal agreement.

Final Modifications:

Following the public hearing, in Subsection (C), CDSS corrected the citation to Section 22-071 from Subsection (c) to Subsection (e). CDSS also added the phrase "original hearing" to modify the hearing "request," to differentiate it from a hearing request based upon the redetermination notice. In Subsection (E), CDSS amended the regulation to clarify that the agreement must be signed by the parties to be reported for compliance issues.

Section 22-054.222

Specific Purpose:

This section is being amended to allow 30 days instead of 15 days for a claimant to request that a dismissal decision based on non-appearance be set aside to schedule a new hearing.

Factual Basis:

The amendment is necessary because Department staff have observed that for many claimants, 15 days is not enough time to gather and present evidence of good cause. For

example, if the claimant was prevented by illness from appearing, a doctor who treated the claimant may not respond promptly to the claimant's request for documentation. Claimants' advocates have suggested that 30 days would be sufficient. That suggestion is incorporated in the amendment.

Final Modifications:

The text was modified after public hearing to change the time to request a dismissal from 15 to 30 days. This time change was set forth in the Initial Statement of Reasons, but omitted from the regulation language changes. The regulation language was changed to 30 days.

Section 22-054.34

Specific Purpose:

This section is being amended to protect a claimant's right to a decision on a disputed issue.

Factual Basis:

The amendment is necessary because the previous language was overly broad. It allowed issues to be dismissed on the basis of a "previous state hearing," even if the previous state hearing had been dismissed without actually deciding the issue. The purpose of this regulation is to avoid a duplicate hearing of an issue that has already been decided against the same claimant. The regulation was never intended to limit a claimant's due process right to be heard on an issue not previously decided or on which the claimant had not yet been heard.

The addition of the word "decision" is necessary to clarify that the issue must have been actually decided in the prior hearing. If the issue was not raised or was raised but not decided, then the prior hearing does not support a dismissal.

The addition of the word "same" clarifies that this regulation does not support dismissing a request for hearing against a second claimant who was not a party to the first hearing, even if the same issue is raised.

Section 22-054.38

Specific Purpose:

This section is being added to establish that an ALJ's jurisdiction is limited to issues in dispute and does not extend to moot issues.

Factual Basis:

The proposed addition is necessary to state the agency's long-standing interpretation of its enabling statutes. There is no authority for an ALJ to give advisory decisions related to an issue not actually disputed by the parties because W&I Code section 10950 provides a hearing

only for a claimant who is "dissatisfied" with a specific departmental "action or inaction" related to the claimant's application for or receipt of benefits.

Example: A claimant requests a hearing request based on county inaction. Then, the county grants all requested aid with a notice of action. The claimant nevertheless declines to withdraw the hearing. The claimant still wants the ALJ to hear the case. The ALJ may dismiss the case because it has been fully resolved by a final action.

Example: A claimant requests a hearing to dispute a Welfare-to-Work sanction. After the claimant appeals, the county exempts the claimant from Welfare-to-Work requirements, rescinds the sanction with a notice of action and restores aid. The claimant still wants the ALJ to hear the case. The ALJ may dismiss the case because it has been fully resolved by a final action.

Example: A claimant receives a CalWORKs overpayment notice and requests a hearing. The county rescinds the notice without stating that it will take no further action to assess or collect the overpayment. This rescission does not fully or finally resolve the issue for hearing because the county may send a new notice of overpayment. The ALJ does not dismiss the case because it has not been fully resolved by a final action.

Final Modifications:

Following the public hearing, CDSS modified the proposed language to remove passive voice and clarify that the ALJ makes the determination that an issue is moot. CDSS also modified the proposed language to clarify that an ALJ may only dismiss an issue as moot based on evidence that the issue has been fully resolved by a final action. Requiring proof that the issue was resolved by final action is necessary to protect the claimant's right to hearing.

Section 22-054.4

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10967.

Factual Basis:

This amendment is necessary because W&I Code section 10967 provides that the claimant has the right to raise the adequacy of the county's notice of action as an issue "at the time of the hearing." Under that statute and MPP section 22-009, if notice is inadequate, then any request for hearing is timely. Since the claimant has the right to raise adequacy as an issue "at the time of hearing," the agency lacks authority to determine that issue prior to the hearing as part of the decision to dismiss an untimely request for hearing.

The amendment deletes the reference to MPP section 22-054.32, which permits dismissals based on untimely requests for hearing, from the list of grounds for dismissal without a

hearing and written decision. The proposed deletion is necessary to bring the pre-hearing dismissal regulation within the agency's authority and make it consistent with W&I Code section 10967.

Although pre-hearing dismissal is not available, a county may request bifurcation under MPP section 22-049.531 to resolve the adequacy of the notice (and any related issues of good cause for delay or equitable estoppel, as provided by W&I Code section 10951) prior to a hearing on the merits.

Section 22-062.5

Specific Purpose:

This section is being amended to specify the correct procedures for an ALJ to refer allegations of discrimination for appropriate action when allegations arise during a hearing.

Factual Basis:

This proposed amendment is necessary because the procedures for referring alleged discrimination and other civil rights violations have changed. The CDSS's Civil Rights Bureau and the DHCS's Office of Civil Rights now receive referrals of allegations raised in state hearings. The allegations are no longer reported to the counties where they are alleged to have occurred. The proposed amendment is also necessary to make the regulation consistent with MPP section 21-203.11 and to correct a typographical error. Without this amendment, the regulation would refer to a nonexistent subdivision of MPP section 21-203.

Final Modifications:

Following the public hearing, CDSS made a minor change to the sentence structure to have the same title structure for the listing of the Civil Rights sections for both CDSS and DHCS.

Section 22-062.5

Specific Purpose:

This section is being amended to specify the correct procedures for an ALJ to refer allegations of discrimination for appropriate action when allegations arise during a hearing.

Factual Basis:

The amendments are necessary because the procedures for referring alleged discrimination and other civil rights violations have changed. The CDSS's Civil Rights Bureau and the DHCS's Office of Civil Rights now receive referrals of allegations raised in state hearings. The allegations are no longer reported to the counties where they are alleged to have occurred. The proposed amendment is also necessary to make the regulation consistent

with MPP section 21-203.11 and to correct a typographical error. Without amendment the regulation would refer to a nonexistent subdivision of MPP section 21-203.

Sections 22-065.12 and .121 to .125

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10960(b)(7). This section is also being amended to require a person who requests a rehearing based on new evidence to either submit the new evidence or explain why it cannot be submitted.

Factual Basis:

W&I Code section 10960(b)(7) establishes grounds for rehearing when "newly discovered evidence, that was not in custody or available to the party requesting rehearing at the time of the hearing, is now available and the new evidence, had it been introduced, could have changed the hearing decision." To determine whether new evidence "could have changed the hearing decision," the State Hearings Division needs to examine the new evidence. Therefore, the proposed addition to MPP section 22-065.121 requires the person requesting a rehearing to provide the new evidence. If the new evidence cannot be produced, the proposed addition allows the requesting party to explain why. The proposed amendment of "will" to "could have" in MPP section 22-065.124 makes the regulation consistent with the enabling statute. Subsections .122 through .124 are also being amended for editorial purposes.

Final Modifications:

Following the public hearing, CDSS added Subsection .125 to clarify that the Department will not deny a hearing solely because a party requesting a rehearing on the grounds of new evidence failed to include that evidence with the request for rehearing. Sometimes the party is still waiting to receive the new evidence. The amendment clarifies that if not provided with the rehearing request, the party must provide the new evidence at the hearing. This amendment protects a party's right to a rehearing based on new evidence, while ensuring that a rehearing based on new evidence requires the production of the new evidence.

Sections 22-065.131, .142

Specific Purpose:

These sections are being amended to change the presumed mailing time for a decision or a request for rehearing to five days rather than three days. The amendments protect claimants' rights to rehearing by allowing more time to request a rehearing.
Factual Basis:

These amendments are necessary because a claimant's right to request a rehearing is limited to the 30 days after a decision is received. Where the date of receiving the decision or mailing a request for rehearing are unknown, these sections presume the dates based on mailing time. The amended presumption of five days, rather than three days, for mailing time is consistent with the time for mailing required in Code of Civil Procedure section 1013(a), which governs service of process in civil actions. The extended period is also more consistent with the time actually required for a request for hearing to be placed in a mailbox, picked up by the postal service, delivered to the CDSS central mail room and forwarded to the State Hearings Division.

Section 22-065.15, 16

Specific Purpose:

This section is being added to define the term "good cause" and to allow a party to request a rehearing more than 30 days after the decision, if there is good cause for the delay or if equitable jurisdiction applies.

Factual Basis:

This addition is necessary because W&I Code section 10960(a) requires rehearing requests to be made within 30 days after the director's decision. W&I Code section 10960(f) provides that a claimant may request a rehearing more than 30 days after receipt of a hearing decision in certain circumstances. The State Hearings Division has determined that Subdivision 10960(f)(1) allows a claimant to file a late request for rehearing when the claimant did not receive the decision or had good cause for filing late. The proposed additions also provide the statutory definition for "good cause." The proposed additions also allow for the application of equitable jurisdiction, as provided by Subdivision 10960(f)(3).

Final Modifications:

Following the public hearing, CDSS made a minor grammatical change, from "the adequate notice" to "an adequate notice."

Section 22-065.3

Specific Purpose:

This section is being amended to make the regulation consistent with W&I Code section 10960(a) by stating that the time limit to act on a rehearing request is 35, rather than 15, days and by deleting reference to a request being deemed denied if not acted upon timely.

Factual Basis:

This amendment is necessary because W&I Code section 10960, as amended by AB 921 (Chapter 502, Statutes of 2007, Section 1, effective January 1, 2008) and SB 1421 (Chapter 179, Statutes of 2008, Section 242, effective January 1, 2009) provides that the director shall grant or deny a rehearing request no later than the 35th working day after the request is made. AB 921 revised the statute's prior requirement to grant or deny "no earlier than the fifth nor later than the 15th working day." AB 921 also eliminated the prior requirement deeming a rehearing request denied if not acted on within 15 days. The amendments are necessary to make the regulation consistent with the enabling statute.

Section 22-065.9

Specific Purpose:

This section was amended to clarify that "designee" meant the individual assigned to the rehearing.

Factual Basis:

Without the amendment, the term "designee" was not clear.

Final Modifications:

The regulation was amended to provide additional clarity by modifying "designee" with the phrase "assigned to the rehearing."

Section 22-069.121

Specific Purpose:

This section is being amended to allow the county to submit a copy of the request for hearing, rather than the original, to the ALJ at hearing.

Factual Basis:

This amendment is necessary because rehearing requests are received and stored electronically. There may be no "original" request, and even when there is a paper original, electronic storage is more efficient and secure. To accommodate electronic filing, this amendment allows the use of either the original or a copy of the hearing request.

Section 22-071.1

Specific Purpose:

This section is being amended to add the requirement for adequate notice to applicants entitled to hearings under the Resource Families Approval process or the order in *Harris v. CDSS*,

Sacramento Superior Court Case No. 34-2010-8000438, entered June 13, 2012. The section is also being renumbered as required by the addition, to designate listed items with letters (a) through (j), rather than numbers .1 to .20.

Factual Basis:

The amendment is necessary to adopt as a regulation the settlement in *Harris v. CDSS*, Sacramento Superior Court Case No. 34-2010-8000438, order entered June 13, 2012, which requires notice of adverse home decisions. The amendment is also necessary to implement hearing rights under the Resource Family Approval program.

The renumbering is necessary to avoid confusion between the designations ".20" and ".2."

Final Modifications:

Following the public hearing, CDSS corrected the citation to 22-001(c)(3), by inserting the parentheses to Subsection "c" and removing the hyphen in (c-(3)", in 22-071.1(h).

Section 22-071.3

Specific Purpose:

This section is being amended to require the use of notice forms approved by any state agency responsible for public social services, including the DHCS as well as the CDSS.

Factual Basis:

This amendment is necessary because requirements for adequate notice apply to the Medi-Cal program as well as to other public social services. Section 22-001(d)(3) defines the term "Department" to include both the CDSS and the DHCS. The proposed amendment clarifies that the provisions for adequate notice apply to both departments.

Section 22-072.5

Specific Purpose:

This section is being amended to make the regulation consistent with MPP sections 42-750.4 and 47-420.32 by clarifying that although aid is not paid pending the hearing on a noticed change or termination of supportive services, timely notice must be sent of the change or termination, and aid must be paid pending a hearing to dispute a reduction or termination made without timely notice.

Factual Basis:

This amendment is necessary because the prior regulation was misunderstood to prohibit aid pending the hearing even when supportive services were reduced or terminated without notice. In fact, MPP section 42-750.4 requires the county to notify a recipient of supportive

services before changing or terminating the services. MPP section 42-750.213 provides that supportive services are not continued as aid pending the hearing, even when the hearing is requested within 10 days after the notice of action. However, Section 42-740.213 does not contradict the notice requirement in MPP section 42-750.4. Section 42-750.213 applies only to changes in supportive services for which the county sends a timely notice of action as required by Section 42-750.4.

Final Modifications:

Following the public hearing, CDSS added hyphens changing "Welfare to Work" to "Welfare-to-Work" for consistency with the Division 42 program name.

Sections 22-072.611 to .613

Specific Purpose:

This section is being amended to clarify the right to and limits on aid pending a hearing when a request for hearing is conditionally withdrawn and the county has sent a new notice in compliance with the conditional withdrawal agreement. The subsections are renumbered as required by the addition of this clarification.

Factual Basis:

This amendment is necessary to protect the claimant's right to aid pending the hearing while the county complies with the conditional withdrawal agreement. Some counties misunderstood the regulation to allow aid pending the hearing to cease at the time the conditional withdrawal was agreed upon. The amendment is also necessary to limit the county's duty to provide aid pending after it has sent a redetermination notice in compliance with the conditional withdrawal agreement.

Final Modifications:

Following the public hearing, CDSS amended the regulation to clarify that the county notices that will end the aid pending a hearing can include a redetermination notice after a conditional withdrawal.

Section 22-072.621 to .622

Specific Purpose:

This section is being amended to substitute "whether" for "that" and make appropriate grammatical corrections to clarify that the ALJ must determine whether aid pending the hearing is appropriate to each issue presented, but is not required to order aid pending unless the facts and law support it. The proposed amendments also substitute "any" for "the" to acknowledge that the ALJ may not have made any aid pending order at the original hearing.

Factual Basis:

When a request for hearing presents multiple issues, the ALJ must determine whether aid pending the hearing is appropriate as to each issue. The amendment of Section 22-072.621 is necessary to clarify that the ALJ is not required to find that aid pending is appropriate; rather, the determination will depend on the fact and law of the particular case. The amendment of Section 22-072.622 is necessary to clarify that the ALJ may not have made the aid pending order at the original hearing.

Final Modifications:

Following the public hearing, CDSS added a comma after the phrase "as to some issues" for grammatical purposes.

Section 22-073.11

Specific Purpose:

This section is being amended to allow counties to provide aid pending the hearing in the form of electronically transferred benefits.

Factual Basis:

This amendment is necessary because aid is no longer provided by mailed paper checks, but is usually provided in the form of electronically transferred benefits accessible through an electronic benefit transfer card.

Final Modifications:

In the Initial Statement of Reasons, this section inadvertently was listed as 22-073.12. In this Final Statement of Reasons, the section citation is corrected to 22-073.11. Section 22-073.12 of the regulations was not being modified.

Section 22-073.211

Specific Purpose:

This section is being amended to allow the county to contact the claimant's authorized representative, if the claimant has appointed one, when the county needs more information to clarify the issue raised in the request for hearing.

Factual Basis:

This amendment is necessary to make the regulation consistent with Section 22-085.1 by protecting the claimant's right to appoint an authorized representative, as described in Section 22-085.1, for all aspects of the hearing process, including assisting the county with identifying the dispute.

Section 22-073.231

Specific Purpose:

This section is being amended to allow the county to contact the claimant's authorized representative, if the claimant has appointed one, when the county representative determines that the county's action was incorrect and an attempt at informal resolution is required.

Factual Basis:

This amendment is necessary to protect the claimant's right to appoint an authorized representative, as described in Section 22-085.1, for all aspects of the hearing process, including informal resolution.

Section 22-073.232(b)

Specific Purpose:

The proposed amendments clarify the county's duty to identify "other issues," rather than "further contentions," for hearing.

Factual Basis:

The substitution of "whether" for "if" corrects an error of word usage. The substitution of "other issues" for "further contentions" clarifies the county representative's duty, which is to identify all issues the claimant intends to raise at the hearing.

Section 22-073.251(c)

Specific Purpose:

This section is being amended to establish requirements for a written position statement when the county is unable to determine the issue in dispute despite good-faith attempts to satisfy its obligations to contact the claimant for clarification, determine what other issues the claimant will raise at hearing, evaluate the county's action, resolve the case informally if possible and assist the claimant in preparing the case for hearing.

Factual Basis:

This amendment is necessary because W&I Code section 10952.5 provides that if regulations require an agency to prepare a written position statement on the issues in question for hearing, the statement must be available not less than two working days prior to the hearing. The MPP section 22-073.251 requires the position statement to include a summary of relevant facts, regulatory justifications for the county action, budget computations as applicable and documentary evidence and witness lists. County representatives expressed concern that in some cases they are unable to determine the disputed issue despite their good-faith attempts

to review the case and contact the claimant. For example, the county representative might review the hearing request and find no issue specified, review the case file and find no adverse actions within the previous 90 days, and attempt to contact the claimant and receive no call back. The amendment allows the county to submit a statement of position that describes the county's good-faith efforts to determine, review and resolve the disputed issues.

Final Modifications:

For grammatical reasons, the word "disputed" was moved from after the phrase "county action", to before the phrase.

Section 22-073.252

The Specific Purpose and Factual Basis for amendments to this section are discussed above. See Section 22-073.252, discussed with Sections 22-004.1, .2, .22 and .3)

Final Modifications:

Following the public hearing, CDSS amended the regulation by clarifying that the county must provide the statement of position to the claimant electronically, if the claimant requests this form of receipt and the county can comply with federal and state privacy laws. This will provide consistency with Affordable Care Act hearings, where electronic transmission is already required, as well as facilitating the claimant's receipt of the statement.

Section 22-085.1

Specific Purpose:

This section is being amended to allow a claimant to name more than one authorized representative and to require a claimant who names more than one authorized representative to designate a lead authorized representative. This section is also being amended to eliminate the prior requirement that an authorized representative must be appointed after the county action disputed in the hearing request.

Factual Basis:

This amendment requiring a lead representative is necessary to promote efficiency and order in the hearing process. MPP section 22-085.1 allows a claimant to designate an authorized representative. In some cases, a claimant may name several persons as authorized representatives. To prevent contradictory or unclear communications, the county representative must know which authorized representative has authority to speak for the claimant. To prevent disorder during the hearing, the ALJ must also know which authorized representative will ask questions, make decisions about waivers, continuances and open records, and receive the decision.

The deletion of the requirement to designate a representative after the date of the disputed action is required for consistency with W&I Code section 14014.5, which states that the appointment of a representative is effective until cancelled. This means that an applicant or beneficiary who designates an authorized representative is entitled to be represented by the authorized representative in a state hearing to dispute an action taken after the appointment. The prior language of MPP section 22-085.1 would have required an additional authorization, which would be inconsistent with the statute.

Section 22-085.13, .14 and .24 (as renumbered)

Specific Purpose:

This section is being amended to make it consistent with W&I Code section 14014.5 by adding protections for incompetent claimants.

Factual Basis:

The amendment to MPP section 22-085.13 is necessary to add the definition of "competent" stated in W&I Code section 14014.5(g)(2). The amendment to MPP section 22-085.14 is necessary to protect claimants who have conservators appointed by a court, who may otherwise be subjected to actions by self-dealing representatives acting without the knowledge or authority of the court-appointed conservator. The amendment to MPP section 22-085.24 is necessary to allow incompetent persons to be represented in state hearings when that is in the incompetent person's best interest, as required by W&I Code section 14014.5(j).

Section 22-085.23-.25

Specific Purpose:

This section is being amended to allow attorneys and their staff to appear as authorized representatives for an incompetent claimant, based on their statement that the claimant is their client.

The proposed amendment adds Subsection .24 to address situations in which a claimant is not competent, and there is no one a Judge can determine can represent the claimant's information pursuant to Subsection .23. This resulted in renumbering of the former Subsection .24 to .25.

Factual Basis:

The amendment is necessary to conform with the practices of other judicial and quasi-judicial bodies who accept and act on an attorney's statement that the attorney represents the client on whose behalf the attorney is petitioning. Under California law, members of the bar have a professional duty to make only truthful communications with a judicial tribunal (Rule 5-200 of the California Rules of Professional Conduct), to avoid conflicts with the client's interests (Rules 3-300, 3-310), and to keep the client informed (Rule 3-500). Therefore, an attorney for the incompetent claimant may be permitted to represent the claimant, similarly to a

relative of the person who signed the statement of facts, without a separate authorization presented to the State Hearings Division.

Subsection .24 permits an ALJ, in his/her discretion, to permit a person the Judge determines is knowledgeable of the claimant's situation, to be the representatives if in the claimant's best interest. This provides due process to remedy claimant issues, when the claimant was unable to appoint a representative prior to losing competency.

The addition of Subsection .24 required the renumber of former Subsection .24 to .25.

Section 22-085.42

Specific Purpose

This subsection is being added to clarify that if a county fails to send notices or communications to an authorized representative, such failure could constitute good cause for delay in filing a hearing request.

Factual Basis:

This proposed addition is necessary to allow ALJs to consider a county's failure to send notices and communications to an authorized representative in determining whether the claimant had good cause for a delay in filing a request for hearing.

Adding this subsection responds to concerns expressed by claimants' advocates that the current regulations to not address the consequence of a county's failure to send state hearing-related notices and communications to authorized representatives, as required by Section 22-084.4.

Final Modifications:

Following the public hearing, CDSS deleted an extraneous word, changing "in this Section" to "in Section."

b) Identification of Documents Upon Which Department Is Relying

Harris vs. CDSS

AB 921, Statutes of 2007

AB 12, Statutes of 2010

AB 1, Statutes of 2013

SB 855, Statutes of 2014

AB 403, Statutes of 2015

AB 1997, Statutes of 2016

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS considered the following alternatives with the following results:

1. No Action

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost- effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments do not affect small businesses, because participants in state fair hearings are private persons or public agencies.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that all participants in state fair hearings are private persons or public agencies. Small businesses are not participants in state hearings on public social services.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses in the State of California.

The Creation or Elimination of Jobs Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

These proposed regulations aim to conform with changes to statutes governing due process for hearings related to public social services and to implement suggestions from stakeholders for improving due process in these hearings. The proposed amendments do not affect substantive rights or duties for individuals receiving social services, nor for public and private agencies administering the social services programs. Therefore, the Department has determined that this regulatory proposal will not have an impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The benefits of the regulatory action to the health and welfare of California residents, worker safety and the state's environment are as follows: bringing hearing regulations into conformity with enabling statutes, making hearings more fair and efficient and improving access to due process for applicants and recipients of public benefits.

g) Benefits Anticipated from Regulatory Action

The action modernizes CDSS procedures by providing for electronic communications, clarifies ambiguities in the previous regulations and responds to stakeholder requests for additional clarity and protections.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment. While electronic communications are allowed for private persons who prefer them, they are not required.

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on June 20, 2017, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from May 5, 2017 to 5:00 p.m. June 20, 2017:

Comments from San Bernardino County

1. Section 22-045.3

Comment:

The county believes the Initial Statement of Reasons and Regulations Text have conflicting information for Section 22-045.3. In the Initial Statement of Reasons, it states 15 days; however, the regulations text still reflects 10 days.

Response:

The proposed regulation has been corrected to provide that the State Hearings Division will mail or otherwise provide notice 15 days before the hearing. If a party fails to receive the notice at least 10 days before the hearing, the party may obtain a postponement on request.

2. Section 22-054

Comment:

The county believes that this proposed regulation does not provide steps a county needs to complete when rejecting a conditional withdrawal agreement. They feel this is needed as a county may agree to a conditional withdrawal and then further information is obtained that can change what the county is willing to do. Counties can be held liable for a compliance issue if they do not comply with a conditional withdrawal agreement.

Response:

A county is not required to agree to a conditional withdrawal. Proposed Section 22-054.211(b)(3)(E) is amended to provide that a compliance issue exists only for the county or other agency that has signed the conditional withdrawal agreement.

The regulations do not provide for rejecting a conditional withdrawal after the parties enter a conditional withdrawal agreement. If a county or other agency does agree, then it must carry out the agreement it has made. For example, a county may agree to re-evaluate the claimant's eligibility based on new information to be provided by the claimant. If the new information does not support a change from the previous determination, then the notice of redetermination must state that finding. Under Section 22-071.1(e), the county must notify the claimant when it completes the redetermination, whether or not the result is different. Under proposed Section 22-054.2(3)(C), the request for hearing is dismissed when the county issues its notice. However, the claimant has the right to request another state hearing to dispute the redetermination.

Comments from Legal Services of Northern California (LSNC)

1. Section 22-009.2

Comment:

The LSNC believes that there is no reason why the 90-day look-back period should apply to every program except IHSS and that the process does not mean IHSS recipients should lose the right to challenge current benefits going back 90 days essentially as a challenge to a continuing violation, even when there is no change in circumstances, as is the case for every other program under this regulation.

The LSNC also states that CalFresh has a separate regulation, Section 63-802.12, that authorizes going back one year to restore lost benefits. The one-year period to restore lost benefits is also required by 7 C.F.R. Section 273.15(g). Therefore, CalFresh should be exempted from this regulation.

Response:

The proposal is amended to clarify that all recipients of public benefits, including IHSS recipients, have the right to request a hearing to review the current amount of aid, including the 90-day look-back period. The proposal is also amended to clarify the relation between MPP section 22-009.2, as amended, and the regulations requiring that changes to IHSS benefits require a needs assessment, including, but not limited to, MPP sections 30-761.12, 30-761.2, and 30-761.219.

7 C.F.R. 273.15 does not itself establish state hearing jurisdiction. Section 22-009.2 expands jurisdiction for any non-IHSS claimant to seek a 90-day review. Once jurisdiction is established, 7 C.F.R. 273.15 may apply depending on the facts of the case. Section 22-009.2 does not limit the application of 7 C.F.R. 273.15 or other federal law.

2. Section 22-045.4

Comment:

LSNC states the expedited hearings section as proposed does not include a timeframe for county compliance. Without specifying a timeframe for compliance, the normal 30-day compliance period will apply, which defeats the purpose of an expedited hearing. Therefore, LSNC believes the following text should be added to resolve this problem:

If the decision of the director in an expedited hearing is wholly or partially in favor of the claimant, the county shall comply with the decision pursuant to Sections 22-071(h) and 22-078.2 within 5 days of receipt of the decision.

Response:

One purpose of an expedited hearing is to review and, if necessary, overturn the action in less than the standard 90-day period for completing a state hearing. Expediting the hearing accomplishes this purpose.

Section 22-078.1 requires the respondent agency to initiate compliance "immediately upon receipt of a decision." Section 22-078.2 sets a 30-day period, not for compliance, but for reporting compliance. No further amendment is required.

3. Section 22-051.43

Comment:

The LSNC states that the proposed regulation regarding subpoenas does not give the opportunity for the party requesting the subpoena to respond to an objection. Even if only the ALJ can review the documents in camera, due process requires that the privilege notification to the claimant should give enough information for the claimant to make arguments why the document in question should not be privileged, and the claimant should have that opportunity. To resolve this problem, LSNC believes the following should be added at the end of Section 22-051.43: "The party requesting the subpoena shall have the opportunity to respond to the objection. The ALJ shall make a ruling during the hearing on the claim of privilege."

Response:

The party requesting a subpoena should have the opportunity to respond to objections on the record. Therefore, proposed Section 22-051.43 is amended to insert "At the hearing, the party requesting the subpoena may respond to any objection stated by or on behalf of the witness or the responding party." Proposed Section 22-051.5 is also amended to state that the response, like the claim of privilege and any objection to the claim, must be made on the record.

Under Section 22-050.1, the ALJ has discretion to determine the manner of taking evidence that is best suited to ascertain the facts, and is not required to rule during the hearing.

4. Section 22-054.2

Comment:

The LSNC suggests editing this section to say: "(3)(C) When the county issues notice of its redetermination under Section 22-071.l(e), the original hearing request is dismissed. The claimant has a right to request a new hearing to dispute the notice of redetermination if the claimant does not reinstate the hearing request within the time limits set forth in Section 22-009, the request shall be dismissed."

Response:

The proposal is amended as suggested.

5. Section 22-54.38

Comment:

The LSNC believes this section should not be added because it violates 45 C.F.R. section 205.10(a)(v)(5), which governs administrative dismissals in TANF (CalWORKs) cases. The federal regulation allows denial or dismissal of a hearing request only when the claimant withdraws the hearing request, where the sole issue is automatic grant adjustment for a class of recipients, where a decision issued after a prior WIN hearing before the manpower agency, or where the claimant abandons the hearing [45 CFR § 205.10(a)(5)(v)]. The federal regulation does not allow for administrative dismissal or denial of a hearing for alleged mootness. Adding mootness as a basis for administrative dismissal is particularly problematic because the county can take action and claim a case is moot while the claimant argues that the county action does not entirely resolve the issue. The claimant should be able to present this argument to an ALJ without the need to respond to a proposed administrative dismissal.

Response:

Dismissal for mootness is appropriate only when there is proof before the ALJ that full relief has been granted. 45 C.F.R. Section 205.10(a)(5) provides for a hearing when an applicant's "claim for financial assistance is denied, or is not acted upon with reasonable promptness," or when an agency action results in "suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued." A hearing should not be dismissed as moot unless there is sufficient evidence for the State Hearings Division to determine that no suspension, reduction, discontinuance, termination, or other adverse determination is in force.

The proposal is amended to emphasize that the ALJ may dismiss an issue as moot only based on evidence that it has been fully resolved by a final action.

6. Section 22-054

Comment:

The LSNC suggests adding the following to this section:

> "Reference: Sections 10553 and 10554, Welfare and Institutions (W&I) Code, and 45 CFR 205.10(a)(5)(v~~8~~)."

Response:

The citation was corrected, as proposed.

7. Section 22-065.12

Comment:

The LSNC states that this section adds that a rehearing request must include any additional evidence or an explanation why the evidence cannot be submitted with the rehearing request. If this is added, the section on requirements for the hearing decision should be amended to inform claimants of this requirement. This amendment would be: 22-063.111 - "Applicable rehearing rights, including that any additional evidence for the rehearing request be submitted with the request or the rehearing request explain why the evidence is available but cannot be submitted." This addition is necessary to inform claimants that any new evidence must be submitted with a rehearing request.

In addition, the regulation should specify that failure to submit the new documents should not, by itself, be grounds for denying rehearing, and that, in the event new evidence is referenced but not submitted, all other issues in the rehearing request not related to the new evidence should be considered. Adding a new section would do this. Section 22-065.125 would state: "Failure to include the information and documentation specified in .121-.124 shall not, by itself, be grounds for denying the rehearing request."

Response:

Section 22-063.111 requires the notice of decision to state applicable rehearing rights. The notice of decision can be updated without amending Section 22-063.111.

Proposed 22-065.125 will be added to state that failure to submit the new evidence with the rehearing request is not itself grounds for denying the request. However, a request for rehearing still must provide sufficient information to determine whether a rehearing is authorized by statute.

8. Section 22-065.152

Comment:

The LSNC suggests the following edit to this section: "The claimant's inability to understand an adequate and language-compliant notice, in and of itself, shall not constitute good cause."

Response:

The proposed regulation is amended as suggested.

9. Section 22-072.611

Comment:

The LSNC suggests the following edit to this section: "If the withdrawal is conditional, the county shall provide aid pending retroactively and prospectively if the request for a hearing is subsequently reinstated (see Section 22-054.211), provided that the claimant has complied with conditions set forth in the agreement accompanying the conditional withdrawal."

Response:

The proposed amendment is corrected as suggested.

10. Section 22-072.612

Comment:

The LSNC suggests the following edit to this section: "If the withdrawal is conditional, aid pending shall continue until the county issues a new notice informing the claimant of its action in compliance with the conditional withdrawal agreement redetermination under Section 22-071.l(e). The claimant's right to aid pending after that notice of action will depend on whether the claimant requests a hearing within the time allowed in Section 22-072.5."

Response:

The suggested additional language is included, since it provides the example of redetermination, which is the most common county action in compliance with a conditional withdrawal agreement. The previous language is not deleted, because in some cases the conditional withdrawal agreement calls for other actions.

11. Section 22-085.42

Comment:

The LSNC states that this Section 22-085.41 requires the county to serve notices on authorized representatives. However, the new section as written makes the requirement to serve notices on the authorized representative meaningless because the ALJ can find that service is valid even there is not service on an authorized representative. The requirement of service on an authorized representative should be strictly enforced and the only way to do that is to require a finding that service is inadequate if it is not done on the authorized representative. Therefore, Section 22-085.42 should be revised as follows: "If the county fails to send a copy of a notice to the authorized representative as required in this Section 22-085.4, an ALJ may consider that fact in determining whether notice was received by the claimant under Section 22-009.11, and whether the claimant had good cause for delay under Section 22-009.13 that notice shall not be considered received by the claimant under Section 22-009.11 and the claimant shall have good cause for delay under Section 22-009.13."

Response:

When an authorized representative does not receive notice as required, the proposed regulation allows for appropriate consequences as required by due process according to the facts of the case. No further amendment is required.

Comments from Justice in Aging, Disability Rights California, and Bet Tzedek Legal Services.

1. Section 22-009.2

Comment:

The testimony states: "We write to strongly object to the proposed changes to the Department of Social Services Manual of Policies and Procedures (MPP) section 22-009.2. These changes restrict the rights of In-Home Supportive Services (IHSS) recipients, all persons with disabilities, to receive hearings and to have an ALJ consider their claims with a 90-day look back period. No other public benefit recipient is singled out for these unnecessary restrictions.

Currently, MPP section 22-009.2 allows for all public benefit recipients, regardless of program, to request a hearing at any time to contest the level of benefits received during the past 90 days. The right to file for a hearing to review benefits does not require county action or a county notice issued within the past 90 days. We believe the current regulation is fair and necessary to provide recipients with equal access to hearings across all public benefits programs. We strongly urge the Department to retain the current language and preserve existing rights.

The proposed change will disadvantage IHSS recipients by restricting their hearing rights. By definition all IHSS recipients are people with disabilities. Title II of the Americans with Disabilities Act requires a 'public entity shall not impose or apply eligibility criteria that

screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless sud1 criteria can be shown to be necessary for the provision of the service, program, or activity being offered.' 28 C.F.R. § 35.130 (b)(8).

The Department's proposed change to MPP section 22-009.2 is unnecessary and will harm recipients, in violation of the ADA. Despite the Department's explanation in the 'Initial Statement of Reasons' that the change 'is necessary to prevent delays in reassessments of recipients' need for IHSS services,' the proposed change merely limits a recipient's ability to seek redress. The following describe some of the reasons this proposed change will negatively affect IHSS recipients:

- The IHSS program funds in-home workers to allow people with disabilities to live safely in their homes. The categories of services are organized in complex and often counterintuitive rules, making it difficult for recipients to fully understand the services they rely upon, especially within the 90 days following a county notice.

- To receive IHSS, a recipient's income and resources must be low enough to be eligible for Medi-Cal. This lack of income makes obtaining timely advice as to whether to appeal more difficult. IHSS recipients do not have the income necessary to hire private attorneys, instead having to rely upon the patchwork of free legal aid services. These free legal resources are even more elusive in rural communities.

- The IHSS recipients live with physical and psychological disabilities, which can lead to significant limitations in their mobility. Indeed, the IHSS program even reflects this in the services it provides-transportation to medical appointments and grocery shopping services to its recipients to address these mobility limitations. The ability of recipients to access legal advice is further hindered by these mobility issues.

- Recipients' mobility and income limitations also hinder their ability to contact their IHSS social workers. If an IHSS social worker chooses not to respond to phone calls from the recipient (an all too common problem), many IHSS recipients cannot simply drop by the IHSS office and wait the required hours necessary to speak with an IHSS employee about the need for a new assessment or increased hours. And, under the proposed new rules, if the recipient cannot contact his IHSS worker, then there is no county action or inaction on which to base a hearing request.

The Department previously attempted to carve out this exception, burying this due process denial targeted at the disabled in an unrelated All-County-Letter (ACL) 10-61. In a section entitled 'State Hearings' on last page of ACL 10-61, it states, '[f]or IHSS, ALJs only have jurisdiction to review cases within 90 days of a county action such as, [SIC] an assessment, failure to assess or reassess or denial of services.' That portion of the ACL was declared invalid after Bet Tzedek challenged it through a writ action.

In likely defiance of the ADA, the state proposes a reduction in hearing and due process rights targeted at the sub-group of public benefits recipients consisting entirely of the disabled. The right to request a hearing without waiting for county action and the 90-day look-back period

provide greater flexibility to the public benefit recipients who need it most: low-income, disabled IHSS recipients struggling with mobility issues and a dearth of legal resources."

Response:

The proposal is amended to clarify that all recipients of public benefits, including IHSS recipients, have the right to request a hearing to review the current amount of aid, including the 90-day look-back period. The proposal is also amended to clarify the relation between MPP section 22-009.2 as amended and the regulations requiring that changes to IHSS benefits require a needs assessment, including but not limited to MPP sections 30-761.12, 30-761.2, and 30-761.219.

2. Section 22-045.11

Comment:

The language of 22-045.11 should track the language in the stipulated class action settlement in *Tesluck v. Swoap* (April 23, 1974) Los Angeles Superior Court No. CA000114: State defendants enjoined from "[d]iscontinuing defendants' former practice of holding home hearings, upon request, at the residences of the welfare claimants, who by reason of a combination of medical, physical or transportational limitations or other reasons, are unable to attend a fair hearing at the designated place in the county" and from "[e]nforcing, applying, implementing and interpreting MPP, EAS-22-045.1 so as to deny plaintiffs, and members of plaintiffs' class, the right, upon request, to have a home hearing or a hearing at a location to which they are able to travel."

Response:

Amendments to the home hearing regulation in Section 22-045.11 will be considered in a future regulatory proposal after informal stakeholder review.

Comments from The Health Consumer Alliance (HCA): Asian Americans Advancing Justice-LA, California Advocates for Nursing Home Reform, California Pan-Ethnic Health Network, Children Now, Coalition of California Welfare Rights Organizations, Inc., Disability Rights California, Disability Rights Education and Defense Fund, Justice in Aging, and Maternal and Child Health Access

1. Section 22-001(c)(2)(F)

Comment:

The term "alien" is a disparaging term for those not born in the United States and instead recommend using the term "immigrant." Although the term continues to exist throughout federal immigration law, the term is banned from California labor law (see Chapter 160, Statutes of 2015) and should be removed from this regulation.

Response:

The proposal is amended as suggested.

2. Section 22-003.1

Comment:

The HCA recommends adding the following language:

> The agency must, at the time specified in 42 CFR § 431.206(c), including at the time an individual applies for Medi-Cal, inform every applicant or beneficiary in writing - of his or her right to a fair hearing and right to request an expedited fair hearing; of the method by which he may obtain a hearing; that he may represent himself or use legal counsel, a relative, a friend, or other spokesman; and of the time frames in which the agency must take final administrative action, in accordance with 42 CFR § 431.244(f). 42 CFR § 431.206(b)(1)-(4).

Response:

Section 22-003 defines the right to a state hearing. The adequacy, timeliness, and language compliance of agency notices are governed by Sections 22-001(a)(1), 22-001(l)(1), 22-071, and 22-072, among others. Agency explanations regarding the right to a state hearing are governed by Sections 22-070 and 22-073, among others. Amendments to these sections will be considered in a future regulatory proposal, after informal stakeholder review.

3. Section 22-009.132

Comment:

Failure to comply with adequate notice requirements consistent with 42 CFR § 438.10, or to provide a language-compliant notice in accordance with these regulations, shall constitute good cause. A failure to consider or grant program modifications consistent with the claimant's rights under section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Section 1557 of the Affordable Care Act and implementing regulations may also constitute good cause.

Response:

This suggested amendment will be considered in a future regulatory proposal, after informal stakeholder review.

4. Sections 22-009.2, .22, .23, .24

Comment:

Striking language multiple sections re: IHSS.

Response:

The proposal is amended to clarify that all recipients of public benefits, including IHSS recipients, have the right to request a hearing to review the current amount of aid, including the 90-day look-back period. The proposal is also amended to clarify the relation between MPP section 22-009.2 as amended and the regulations requiring that changes to IHSS benefits require a needs assessment, including but not limited to, MPP sections 30-761.12, 30-761.2, and 30-761.219.

5. Section 22-045.11

Comment:

Include in the authority note relevant to 22-045.11 re the right to a home hearing: Stipulated settlement in *Tesluck v. Swoap*. (4-22-74) Los Angeles Superior Ct. No. CA 000114.

Response:

Tesluck v. Swoap is not in itself authority for Section 22-045.11. For example, it does not provide for implementing regulations. The proposal is amended to cite the case in the references, rather than the authorities, for Section 22-045.11.

6. Section 22-045.131

Comment:

Suggestion to add "prior to or during hearing" to this section: "If the claimant later rescinds the agreement for a telephone hearing prior to or during the hearing, an in-person hearing will be scheduled and this shall be considered a postponement for good cause."

Response:

Under Section 22-045.132, the ALJ has discretion to terminate a telephone hearing and order an in-person hearing to protect due process rights. No further amendment is required.

7. Section 22-045.41

Comment:

Question regarding this language, asking, "Do counties have ability to do this?"

Response:

The State Hearings Division, counties, and other agencies have various abilities to communicate confidentially by electronic means. The regulation is intended to provide flexibility in giving notice of an expedited hearing. The proposal is amended at Sections 22-045.41 and .42 to allow notice "by telephone, by mail, in person, or through other commonly available electronic means, as authorized by the claimant, consistent with state and federal privacy law." This language conforms to the terms of statutes implementing the Affordable Care Act of 2010, for example, W&I section 14005.37(e)(2)(B).

8. Section 22-045.42

Comment:

Amend to add the word "the" to this section: "If the request is denied, the State Hearings Division shall notify the parties of the denial in writing or by other electronic means and schedule the matter for a regular state hearing."

Response:

The proposed language already included the suggested word. This comment was submitted during informal stakeholder input, prior to the issuance of the proposed amendments.

9. Section 22-045.43

Comment:

Amend to add the word "claimant's" to this section: "The agency shall have its Statement of Position available to the claimant and authorized representative two working days before the scheduled expedited hearing. The State Hearing Division shall reset the hearing immediately upon the claimant's request for a postponement if the Statement of Position is not available as required."

Response:

The proposal is amended as suggested.

9. Section 22-049.53

Comment:

Add as Section 049.534, "Claimant has the right to request an expedited telephone fair hearing to address the right to aid paid pending." This is currently done and it should be addressed at least in the same way as disputes about jurisdiction are addressed. It might be nice to also authorize review of subpoena denials in an expedited telephone pre-fair hearing.

Response:

The creation of pre-hearing proceedings before an ALJ will be considered for a future regulatory proposal after informal stakeholder review.

10. Section 22-051.41

Comment:

Add "including telephone presence" after the work "presence." While experienced claimant representatives know that witnesses can appear by telephone – such as the treating physician – can appear by telephone, most claimants do not know this.

Response:

For telephone hearings, the term "presence" ordinarily indicates telephone presence. However, the physical presence of a witness may be necessary for the ALJ to make a complete record including determinations of witness credibility. Therefore, the proposal will not be amended to provide a blanket right to appear by telephone. The hearing ALJ has discretion to permit telephone attendance or to require the witness's physical presence, including ordering a continued hearing if necessary.

11. Section 22-054.222(a)(1)

Comment:

Add at the end of this section, "Failure to comply with adequate notice or language-complaint notice requirements when notifying of time and place of hearing shall be grounds for good cause."

Response:

The suggested amendment will be considered for a future regulatory proposal after informal stakeholder review.

12. Section 22-065.152

Comment:

Add at the end of this section:

Failure to comply with adequate notice requirements consistent with 42 CFR § 438.10, or to provide a language-compliant notice in accordance with these regulations, shall constitute good cause. A failure to consider or grant program modifications consistent with the claimants rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Section 1557 of the Affordable Care Act and implementing regulations may also constitute good cause.

Response:

The suggested amendments will be considered for a future regulatory proposal after informal stakeholder review.

13. Section 22-070.11

Comment:

Add at the end of this section:

> The agency must, at the time specified in 42 CFR § 431.206(c), including at the time an individual applies for [Medi-Cal], inform every applicant or beneficiary in writing - of his or her right to a fair hearing and right to request an expedited fair hearing; of the method by which he may obtain a hearing; that he may represent himself or use legal counsel, a relative, a friend, or other spokesman; and of the time frames in which the agency must take final administrative action, in accordance with 42 CFR § 431.244(f). 42 CFR § 431.206(b)(1)-(4).

Response:

The proposed amendments will be considered for a future regulatory proposal after informal stakeholder review.

14. Section 22-071:

Comment:

Add as a new subsection, "The notice shall include the reasons and supporting authority that will be included in the agency's position statement." Morales v. McMahon (1990) 223 Cal.App.3d 184, 189; K.W. ex rel. D.W. v. Armstrong (9th Cir. 2015) 789 F.3d 962, 973; Barbes v, Healey (9th Cir. 1992) 980 F.2d 572, 579-580. 28

Response:

Section 22-001(a)(1), cross-referenced in Section 22-071.1, defines adequate notice to include "the reasons for the intended action" and "the specific regulations supporting such action." The proposed amendment, and further amendment of Section 22-001(a)(1), will be considered in a future regulatory proposal after informal stakeholder review.

15. Section 22-072.1

Comment:

Add after the word "aid" the phrase, "Including a termination or reduction via a reauthorization request per 22 CCR § 51003(c)(1)," to ensure there is no misunderstanding concerning APP in cases involving a denial or reduction in a reauthorization request per 22 CCR §§ 51014.1. 51014.2.

Response:

The proposed amendment will be considered in a future regulatory proposal after informal stakeholder review.

16. Section 22-073.25

Comment:

Add at the end of this section, "The position statement shall …comply with the requirements that apply to adequate notices and to a language-compliant notice."

Response:

This suggestion will be considered in a future regulatory proposal, after stakeholder review.

17. Section 22-073.252

Comment:

Add, "The agency shall facilitate claimant's access to the position statement by, among other means, providing the position statement and attachments electronically (i.e., e-mail or facsimile) to claimant and/or his or her authorized representative." This is something the agency representative can address with the claimant at the representative's first phone call with claimant.

Response:

The proposal is amended to add the following language implementing W&I Code section 10952.5(b), added by Statutes of 2016, Chapter 522, Section 1 (AB 2346):

The statement of position must be provided by secure electronic means if the claimant requests electronic transmission and the county can deliver it electronically in compliance with state and federal privacy laws.

The proposal is also amended to add a reference to W&I Code section 10952.5.

18. Section 22-085.4

Comment:

Add at the end of this section, "Adequate notice and language-compliant notice obligations shall apply to all notices sent to an authorized representative."

Response:

The existing regulation requires that the authorized representative receive simultaneous copies of all notices and correspondence sent to the claimant, and other provisions regulate the adequacy and language-compliance of all notices sent to the claimant. No amendment is required.

Comments from Coalition of California Welfare Rights Organizations, Inc. (CCWRO)

1. Section 22-001(a)(1)

Comment:

The CCWRO suggests amending the section to say, "A written notice informing the claimant of the action the county intends to take, the rule, the reasons for the intended action, the steps needed to take to remedy the problem, if any…."

Response:

The existing regulation requires the notice to include the specific regulations supporting the proposed action. Further amendment to include authorities other than regulations as part of the definition in Section 22-001(a)(1) will be considered in a future regulatory proposal after informal stakeholder review.

2. Section 22-001(a)(3)(A)

Comment:

The CCWRO suggests amending this section to add "and services at the discretion of the social worker" after "AFDC-Foster Care."

Response:

Section 22-001(a)(3)(A) is a non-exclusive list of aid programs that may be subject to a state hearing. No further amendment is required.

3. Section 22-001(a)(6)

Comment:

The CCWRO suggests amending the section to say "Authorized Representative – An individual(s) or organizations that has been authorized…."

Response:

Proposed amendments to Section 22-085.1 clarify that a claimant may authorize more than one individual or organization as a representative. No further amendment is required.

4. Section 22-001(c)(2)(H)

Comment:

The CCWRO states that this section violates CFR 45, Section 205.10. They have also added the following comment:

"**The 2015 Child Welfare Manual. Question: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?**
Answer: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are, therefore covered under this regulation. The Department believes that the close programmatic and fiscal relationship between titles IV-E and IV-B makes a fair hearings requirement appropriate. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the State has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. 'The State must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program.'

Examples of service issues in title IV-B that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

Source/Date: ACYF-CB-PIQ-83-04 (10/26/83) (Our emphasis added)
Legal and Related References: 45 CFR 1355.30 (k), 205.10 and 1392.11"

Response:

The proposal is amended to omit the sentence, "However, there is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court."

5. Section 22-001(l)(1)(a)

Comment:

The CCWRO suggests adding the word "appropriate" before the word "Department" and to remove the phrase "who chose to receive written communications offered."

The CCWRO also provided the following comment: "If the primary language of a person is Russian, they should receive the Notice of Action (NOA) in Russian. There is no state or federal law that provides that a person must ask for the notice in her or his primary language. It is the obligation of the government to provide the NOA in his or her primary language."

Response:

Section 22-001(d)(3) defines the term "Department" to mean the Department of Social Services of the Department of Health Care Services, whichever is appropriate. No further amendment is required.

Section 22-001(l)(1)(a) emphasizes the claimant's right to a choice of language for written communications, and creates a rebuttable presumption that a claimant who identifies a primary language other than English chooses to receive communications in that language. No further amendment is required.

6. Section 22-003.14

Comment:

The CCWRO suggests removing this section, and makes the following comment:

"**The 2015 Child Welfare Manual. Question: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?**

Answer: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The Department believes that the close programmatic and fiscal relationship between titles IV-E and IV-B makes a fair hearings requirement appropriate. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the State has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. 'The State must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program.'

Examples of service issues in title IV-B that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

Source/Date: ACYF-CB-PIQ-83-04 (10/26/83) (Our emphasis added)
Legal and Related References: 45 CFR 1355.30 (k), 205.10 and 1392.11 33"

Response:

Amendments to Section 22-003.14 will be considered in a future regulatory proposal after informal stakeholder review.

7. Section 22-009.2

Comment:

The CCWRO stated the following:

"The purpose of the state hearing is to provide a due process forum for claimants, including IHSS claimants. IHSS is a medical service, thus, governed by the Medi-Cal/Medicaid rules that under the Supremacy Clause state regulation §30-761.12 must accede to the Medicaid federal regulations that do not have this 'state barrier to due process.' Thus, this proposed regulation would be in violation of federal law. We would urge the Department to rescind this regulation and would like to remind the Department what the California Supreme Court said in July 2, 1974, in the matter Waits v. Swoap , 11 Cal.3d 887 *'In essence, the department has so enmeshed itself in fictitious and misleading labels for the sake of reducing welfare costs that it has obfuscated the purpose of the underlying statute: the preservation, so far as possible, of the family unit, and the more fundamental purpose of the preservation of the health of the state's children, the potential leaders of tomorrow.'* In this case, the department is putting the aged, blind and disabled in danger by denying them due process of law by creating barriers for them to obtain the needed services to stay in their own homes. In the case of Cooper v. Swoap - 11 Cal.3d 856 the California Supreme Court held:

'The department's desire to cut welfare expenses at any cost has led it to disregard the clear guidelines of its legislative mandate and to construct a contrived and tortured concept of "income" in an attempt to camouflage an impermissible administrative reevaluation of AFDC recipient's needs. An analysis of the complexities of the department's novel determination of "income" is reminiscent of a journey into the fictional realms visited by Alice through the looking glass. In the fanciful world of Lewis Carroll, the inhabitants could turn fact into fiction and fiction into fact by mere ipse dixit. As Humpty Dumpty scornfully informed Alice, "When I use a word, it means just what I choose it to mean -- neither more nor less.'

This rule is also in violation of the ADA provisions that apply to IHSS."

Response:

The proposal is amended to clarify that all recipients of public benefits, including IHSS recipients, have the right to request a hearing to review the current amount of aid, including the 90-day look-back period. The proposal is also amended to clarify the relation between MPP section 22-009.2, as amended, and the regulations requiring that changes to IHSS benefits require a needs assessment, including, but not limited to MPP sections 30-761.12, 30-761.2, and 30-761.219.

8. Section 22-045.224

Comment:

The CCWRO suggests adding the phrase "or will not be able to go to work" in this section.

Response:

The proposed amendment requires the State Hearings Division to expedite a hearing when the denial of supportive services would result in loss of employment. No further amendment is required.

9. Section 22-045.45

Comment:

The CCWRO suggests adding this section to read "The county shall comply within 10 days of the date of the decision."

Response:

Section 22-078.1 requires the respondent agency to initiate compliance "immediately upon receipt of a decision." Section 22-078.2 sets a 30-day period, not for compliance, but for reporting compliance. No further amendment is required.

10. Section 22-050.23

Comment:

The CCWRO states, "We would suggest that the party claiming privilege shall do so in writing and provide a copy thereof the claimant and his or her representative, if any. The claimant shall have the right to request in camera review of the alleged privilege information. The ALJ shall issue a ruling before proceeding any further.

This shall include any privilege information withheld from the case record that is required to be available at all times during the hearing."

Response:

The proposed addition requires any objection to be made on the record if a hearing is held. Written notice of the objection is unnecessary.

The proposal for *in camera* review will be considered in a future regulatory proposal.

11. Section 22-065.31

Comment:

The CCWRO wants to know why this section is being deleted, as it is existing law.

Response:

The W&I Code section 10960 was amended to eliminate the provision that a request for rehearing not acted on within 15 days is deemed denied. See Chapter 502, Statutes of 2007, Section 1, effective January 1, 2008 (AB 921). Therefore, the section to be deleted is no longer existing law.

12. Section 22-072.5

Comment:

The CCWRO states the following: "42-750.213 - When a participant requests a hearing within the period of timely notification (see Section 22-072.5) to appeal a suspension, reduction, or termination of CalWORKs welfare-to-work supportive services or a change in the method of providing such services, the participant shall not be entitled to a continuation of CalWORKs welfare-to-work supportive services in the same amount or form pending the hearing decision. The participant shall be entitled to supportive services only at the level and in the form authorized by the county action under appeal."

Response:

The commenter quotes a regulation cross-referenced in Section 22-072.5. No further amendment is required.

13. Section 22-085.11

Comment:

The CCWRO suggests adding the phrase "for any other hearing filed within one-year of the signing of the authorization form."

Response:

This section is being amended to make the regulation consistent with W&I Code section 14014.5, by eliminating the requirement that an authorization be signed after the action or inaction to be disputed at the hearing. Under W&I Code section 14014.5, the claimant is entitled to limit the scope or duration of the authorization, and to revoke it at any time. This right is inconsistent with a regulatory requirement that the authorization remain valid for one year. No further amendment is required.

j) First 15-Day Renotice Statement

Pursuant to GC section 11347.1, a 15-day renotice and complete text of the modifications to the regulations were made available to the public following the public hearing. The following testimony was received following the 15-day renotice.

Comments from Legal Services of California ("LSNC")

1. Section 22-054.21 l(b)(3)(E)

Comment:

LSNC commented: "Revised Manual of Policy and Procedure (MPP) Section 22-054.21 l(b)(3)(E) addresses the compliance process for conditional withdrawals. However, as

written, the revision makes the compliance complaint process available only for written conditional withdrawals by adding "signed by the parties to the agreement" as a condition for filing a compliance complaint. As written, the revision makes the compliance complaint process inapplicable to verbal conditional withdrawals which would make verbal conditional withdrawals completely unenforceable. However, as long as verbal conditional withdrawals are recognized, there must be a process to enforce them. Although there may be disputes about the terms of a verbal conditional withdrawal, those disputes need to be resolved through a compliance complaint. Such disputes may be a reason to modify or end the verbal conditional withdrawal process. However, they are not a reason to deny enforcement of verbal conditional withdrawals. The new language limiting the compliance complaint process to written conditional withdrawals should be deleted."

Response:

Conditional withdrawals signed by both parties provide a basis upon which the State Hearing Division can accept a complaint of failure to carry out the agreement within the required timeframe. Claimants can come within the proposed regulation by signing the written document the county produced.

Claimants, generally, may request to reschedule their hearing if there are issues with the verbal conditional withdrawal.

For other verbal conditional withdrawal issues, amendments to Section 22-054.2 will be considered in a future regulatory proposal after informal stakeholder review.

2. Section 22-065.125

Comment:

LSNC stated, "Thank you for accepting our prior comment and adding MPP section 22-065.125. I have a technical edit suggestion for the new wording: 'If rehearing is granted, the new evidence must be submitted at the rehearing." (new hearing instead of rehearing also works.) As written, the regulation refers to submitting evidence in a hearing that already occurred. This change clarifies that the evidence is to be submitted at the hearing following granting rehearing."

Response:

The proposed regulation has been corrected. The regulation has been modified to state, "If rehearing is granted, the new evidence must be submitted at the rehearing."

Comments from Alliance for Children's Rights (ACR)

1. Section 22-001(c)(2)(H)

Comment:

ACR states, "On page two, we recommend adding the underlined text to the definition of 'claimant' in subdivision (c)(2)(H) of section 22-001:

An individual who seeks approval to provide foster care and has experienced an adverse home approval decision or a person who receives a denial, rescission or exclusion or who is not approved i n a timely manner under the Resource Family Approval process, pursuant to W&I sections 16519.5 et seq.

W&I § 16519.5 and the Resource Family Approval (RFA) Written Directives require that a family be approved within ninety (90) days of a child being placed in their home. A claimant should include an individual who experienced a delay past the ninety (90) day timeline."

Response:

The proposed amendment, and further amendment of Section 22-001will be considered in a future regulatory proposal after informal stakeholder review.

2. Section 22-045.22

Comment:

ACR commented, "On page nine, the Department's modified language states that the State Hearings Division shall expedite the scheduling of hearings in certain circumstances pursuant to a request. We suggest adding the underlined text to section 22-045.22:

Upon request, the State Hearings Division shall expedite the scheduling of hearings in the following circumstances:

[prior regulatory language without changes omitted]

Hearings involving AFDC-FC, Kin-GAP, or AAP when the claimant is currently receiving no such funding while caring for a minor or nonminor dependent;

Hearings involving the Resource Family Approval process when a minor or nonminor dependent is placed i n the home at issue: and

Hearings involving any other issues of urgency that the State Hearing Division deems necessary."

Response:

The proposed amendment and further amendment of Section 22-045.22 will be considered in a future regulatory proposal after informal stakeholder review.

3. Section 22.054.211(b)(3)(8)

Comment:

ACR states, "On page 13, subdivision (b)(3)(B) includes new language regarding a 'claimant's delay.' This language is concerning because there are foreseeable situations where a county might need further information from the claimant to process conditional withdrawals, but the county does not communicate that need to the claimant. In such cases, a county should not be able to indefinitely extend the compliance period. As a result, we recommend adding the following underlined phrase:

> (3) If the withdrawal is conditional:
> (A) The withdrawal shall be accompanied by an agreement signed by the claimant and by the county.
> (B) Any agreement under this provision shall provide that the actions of the parties will be completed within 30 days from the date the conditional withdrawal form is signed by both parties and received by the county. If the claimant's delay in providing information causes the county to be unable to complete its actions within 30 days, then the 30-day period may be extended to a date up to 30 days after the claimant provides this information if and only if the claimant's delay is not caused by or attributable to county action or inaction."

Response:

The prior regulation provided that the parties had 30 days in which to complete the actions required by a conditional withdrawal. The proposed change added that if a claimant delay in providing information causes the county to be unable to complete the action within 30 days, the county compliance could be extended. An extension "may be" provided only if the claimant's delay in providing information caused the county's inability to comply with the agreement timely. Thus, there is a required causal relation between the claimant's delay and the county's inability to complete compliance. If the county can complete compliance despite the delay, there is no extension needed.

Since the compliance extension provision commences with "If the claimant's delay…causes the county to be unable to complete its action…" the regulation only provides for an extension if the claimant caused the delay. If a county causes a delay, the county would not qualify for an extension of the time to comply with the agreement. For example, if a county agrees to send a form to a claimant, and fails to send the form until day 28, this would not leave the claimant a reasonable period of time to provide the document. The county wouldn't qualify for the extension. The claimant retains the right to contact State Hearing Division to request to reopen the hearing, or to report compliance issues under Subsection (E).

No further limitation on the compliance period or extensions is required to protect the claimant.

(k) Second 15-Day Renotice Statement

Pursuant to GC section 11347.1, a second 15-day renotice and complete text of the modifications to the regulations were made available to the public following the public hearing. The following testimony was received following the second 15-day renotice.

Comments from Justice In Aging ("JIA")

1. Section 22-009 .21

Comment:

JIA states, "As drafted in the proposed regulations, the Manual of Policies and Procedures (MPP) § 22-009.21 severely limits an In-Home Supportive Services (IHSS) recipient's ability to receive a retroactive review of their benefits determination. Similar to the Department's previous attempts to restrict IHSS recipient's rights to retroactive relief, this iteration fails to solve the concerns we raised in our previous comments on June 19, 2017.

Currently, MPP § 22-009 .2 allows for all benefits recipients to request a hearing to contest the level of benefits they receive any time during the past ninety days. The recipient can ask for a hearing even though the county has not acted or issued a notice. This rule gives recipients time to understand their benefits and to request corrections even if they are not immediately discovered. Given the complexity of safety net program rules, these post-eligibility discoveries are unsurprising.

The proposed addition of MPP § 22-009.21 significantly restricts an IHSS recipient's correct this type of post-eligibility mistake. This change is unfair given how complicated the IHSS program rules are and the population who receives IHSS services. The categories of IHSS services are organized in complex and often counter-intuitive ways, making it difficult for recipients to fully understand whether they have been granted the correct number of hours or not. It is also difficult for many IHSS recipients to understand these rules, given that all IHSS recipients are disabled and many live with either chronic pain, dementia or diminished sensory faculties.

This change in state regulation is not supported by law. Title II of the Americans with Disabilities Act specifically prohibits a public entity from "impos[ing] or apply[ing] eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(8).

Unlike every other benefit recipient, an IHSS must prove that their circumstances have changed in order to receive even partial relief from the ALJ. This requirement is burdensome and disadvantages people with disabilities. For example, if an IHSS recipient

needs blood sugar testing provided as a paramedical at the time of her initial assessment, is not informed about that service, currently they could simply ask for a hearing up to ninety days after the notice of action. Under this new proposed rule, they would be restricted in their ability to request a 22-009 .2 hearing because no change of circumstances has occurred since the previous assessment. Additionally, if that recipient asks her social worker to perform a new assessment for the needed paramedical services, and that social worker either never called her back or refused, then the IHSS recipient wait have to wait as long as a year until her next regular assessment to receive the services to which she is entitled.

Finally, IHSS recipients face challenges in obtaining legal advice and advocacy. To receive IHSS, a recipient's income and resources must be low enough to be eligible for Medi-Cal. This lack of income makes obtaining timely advice as to their eligibility more difficult. IHSS recipients do not have the income necessary to hire private attorneys, instead having to rely upon the patchwork of free legal aid services. These free legal resources are even more elusive in rural communities. As a result, many IHSS recipients may be eligible for more benefits than they are granted at their initial assessment.

We urge the Department to preserve IHSS recipients' right to their retroactive hearing rights. The ninety-day retroactive look back period provides greater flexibility to the benefits recipients who need it most: low-income, disabled people struggling with a dearth of legal resources."

Response:

The proposed amendments to Section 22-009.13 and 14 provide for hearing requests within 180 days for good cause, and that nothing in Section 22-009 precludes the application of principles of equity. (These regulation changes implemented a statutory change, which provided for such extended jurisdictional limits). To the degree that the comments discuss an absolute limit of 90 days to request a hearing, they are not supported by the existing law and proposed regulatory changes, and no further amendment is necessary.

The proposed regulation addresses situations in which an IHSS recipient has requested a reassessment and the county has not acted upon the request, so no additional amendment is necessary.

Existing regulations provide that IHSS notices include contact information to free local legal services and statewide welfare rights offices. It is beyond the scope of the regulations to address access to legal representation.

Regarding the additional comments, amendments to the provision in Section 22-009.21 will be considered in a future regulatory proposal after informal stakeholder review.

2. Section 22-085.14

Comment:

JIA commented, "The proposed addition of Section 22-085.14 creates the incorrect perception that only a conservator can appoint an authorized representative if the person is incompetent. The Department states the proposed addition of Section 22-085.14 is 'necessary to protect claimants who have conservators appointed by a court, who may otherwise be subjected to actions by self-dealing representatives acting without the knowledge or authority of the court-appointed conservator.' However, this proposed addition does not address situations where there is a durable power of attorney or other circumstance in which an authorized representative has legal authority to act on behalf of a claimant.

Instead, the regulation should clearly indicate that if the person is incompetent and has a valid power of attorney or health care instruction, then that agent should be able to appoint an authorized representative or to act as the authorized representative. We have attached a letter from State Hearings that allows an agent appointed by a Power of Attorney to act on the incapacitated person's behalf. This procedure is already in place at the state hearing department and the regulations should reflect current procedure.

Further, a conservatorship of the person can be established if a person is 'unable to provide properly for his or her personal needs for physical health, food, clothes, or shelter ....' Probate Code §1801(a). A conservator has the authority to make "a health care decision for a patient." Probate Code 4613. Similar to a conservator, an agent under a power of attorney or an individual health care instruction is a legally appointed fiduciary who has authority to make a "health care decision" on behalf of the patient. Probate Code §§ 4121, 4402, 4605. "Health care" is legally defined as "any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition." Probate Code § 4615. The difference between a conservatorship and a power of attorney or health care instruction is that the former is created after incapacity and the latter is created before incapacity and includes the express wishes of the patient. There is no legally sufficient reason why an authorized representative should be limited to only a conservator and 22-085.14 should be modified accordingly.

In addition, the proposed regulation does not resolve a significant current problem that claimants routinely encounter in which County appeals representatives reject authorized representative forms at the county level, thus denying claimants the opportunity for a hearing at all. For example, Disability Rights California has encountered situations where County appeals workers have rejected authorized representative forms signed by 'incompetent' claimants without any factual or legal basis, and failed to seek the approval of an ALJ in their determination. See MPP 22-085.23, .24. Without advocate intervention, and direct inquiries to the Chief ALJ, these claimants would have been denied recognized due process rights and lost necessary In-Home Supportive Services benefits that allow them to continue living within the community, and avoid unnecessary institutionalization.

Therefore, we request the Department clarify the rules regarding powers of attorney and health care instructions and include language that the counties have no authority to reject authorized representative appointments.'"

Response:

These comments are outside of the scope of the noticed hearing, as they do not address the changes made and open for public comment. Amendments to the provision in 22-085.14 will be considered in a future regulatory proposal after informal stakeholder review.

Comments from Disability Rights California ("DRC")

1. Section 22-009.21

Comment:

DRC commented, "Section 22-009.21 and handbook section following, the changes as proposed and as amended violate the Medicaid comparability protections set out in Section 1902(a)(10)(B) and (C) of the federal Medicaid Act - 42 USC §§ 1396a(a)(10)(B) and (C) - and 42 CFR § 440.240(a).

In looking at the handbook examples and there missing fact pattern that has not been but needs to be addressed and is set out below as proposed example 5:

Example #5: The claimant, a categorically needy individual, receives timely, adequate, and language compliant notice of IHSS hours authorized effective June 1, 2016. The claimant tries to make the hours authorized work for her but in December 2016 the claimant gives up and requests a fair hearing because she is tired of having to choose among laying in her excreta and not being able to get out of her bed or paying out-of-pocket for additional time or begging the worker to work longer than authorized and paid because in fact the hours authorized in July of 2016 do not work for her.

Extrapolating from the prior examples, there would be no reassessment in Example #5 because there was no change in condition or circumstances and therefore no right to a hearing to challenge current hour authorization. Just as the person with a share of cost issue can go back 90 days, so, too, example #5 claimant should be able to do so as well.

The violation of the federal comparability protection is illustrated by comparing Example #2 fact pattern with the fact pattern in the proposed Example #5 case. Assume that in December of 2016 both claimant #2, whether also categorically needy or medically needy, and claimant #5 need 200 hours of IHSS services in a month. In July of 2016 both claimant #2 and claimant #5 were authorized 175 hours a month. Claimant #2 has a progressive disability which translates into a need for 200 hours a month beginning in September of 2016. Under the proposed regulations, Claimant #2 would be reassessed but not Claimant #5. So at least for December of 2016, Claimant #2 could be authorized the additional hours for December of 2016 but not Claimant #5. The establishment of a system where two people who both need 200 hours a month but only one can get an authorization for

200 hours translates into a violation of 42 CFR § 440.240(a) and (b) as well as 42 USC § 1396a(a)(10)((B). As the court in Cota v. Maxwell-Jolly (N.D. Calif. 2010) 688 F.Supp.2d 980, 993, explained:

The "comparability" requirement of the Medicaid Act as set forth at 42 U.S.C. § 1396a(a)(10)(8), which provides that a state plan for medical assistance made available to an individual "shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual. ..." Id.; see also C.F.R. § 440.240. "The 'comparability' requirement of the Medicaid Act mandates comparable services for individuals with comparable needs and is violated when some recipients are treated differently than others where each has the same level of need." V.L. v. Wagner (N.D. Calif. 2009)] 669 F.Supp.2d [1106] at 1114-15 (citing cases); Conlan v. Banta, 102 Cal.Appo.4th 745, 754, 125 Cal.Rptr. 788 (2002) ("[a] state that participates in Medicaid must provide comparable medical services to every participant.

Other questions and comparability problems include these:

If a reassessment is done, does the reassessment look back 90 days if changed circumstances for the retroactive time period are asserted?

If the reassessment only covers the month in which the report of changed condition or circumstances is made, can the IHSS recipient go to hearing on the balance of the retroactive time period?

If the reassessment does not result in an increase in hours authorized and the recipient requests a hearing, can the recipient request a review of entitlement back 90 days measured from when the reassessment was made?

The proposed and amended changes to MPP Section 2009.2 and handbook section conflict with the State's obligations under the CFCO waiver as reflected in State Plan Amendment 13-007, http://www.dhcs.ca.gov/formsandpubs/laws/Documents/13-007 Approved.pdf.

About 41 percent of the current IHSS/Medi-Cal personal care program is covered under the CFCO waiver. http://wvvvv.cdss.ca.gov/inforesources/IHSS The proposed changes place the State in conflict with the State's obligations under that waiver by barring the filing of a fair hearing request seeking additional hours unless the IHSS recipient asserts a change in condition or circumstances and requests a reassessment.

(a) SPA section iii.C. at page 5 says the county social worker will provide a process for changing the person-centered service plan/budget. The proposed change forecloses that option in cases where there is no change in condition or circumstances but the IHSS recipient realizes tardily that the previously authorized hours are not enough to remain safely in his or her home.

(b) SPA Assurances section vi.(B) at page 6 provides that the state assures there are safeguards in place to protect the health and welfare of individuals provided services

under the CFCO State Plan Option. For individuals who do not assert a change in condition or circumstances, the proposed changes take away a critically important protection. (Note, page 6 is the same as that in the SPA 11-034 because SPA 13-007 only included the pages that were changed from those in SPA 11-034. http://www.dhcs.ca.gov/formsandpubs/laws/Documents/Recent%20Amend ments%20SPA0/o2011-034.pdf.)

(c) SPA Service Plan section (i), at page 8 provides that assessment of need shall be made not only when there has been a change but also "at the request of the individual or the individual's representative."

Response:

These comments were received after the close of the public comment period. Amendments to the provision in 22-009.21 will be considered in a future regulatory proposal after informal stakeholder review.